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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,701	01/21/2004	C. Allen Brown	23060-RA	3358
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MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD SUITE 310 ATLANTA, GA 30339			EXAMINER	
			COHEN, AMY R	
		ART UNIT	PAPER NUMBER	
			2859	

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/761,701	BROWN, C. ALLEN
	Examiner	Art Unit
	Amy R. Cohen	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 December 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2 and 4-24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,4-17,19,20,22 and 24 is/are rejected.
 7) Claim(s) 18,21 and 23 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 25 August 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 7, 12 are objected to because of the following informalities:

Claims 1, 7, and 12 claim language lack a structural relationship between the housing and the single wheel.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 5, 7, 8, 10, 12-16, 19, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Presley (U. S. Patent No. 3,163,941) in view of Stoner (U. S. Patent No. 361,791) and in view of Canalle (U. S. Patent No. 6,571,487).

Regarding claims 1, 2, 5, 19: Presley discloses an apparatus for measuring distances (Fig. 1), said apparatus comprising: a wheel (22) comprising incremental line markers for measuring distances (Figs. 1 and 2); a housing (10) that functions as a layout tool, said layout tool selected from the group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Fig. 1), wherein said housing further comprises a truncated flat front wall (18a, 18b), said wall enabling said housing to rest against a wall surface (Fig. 6); wherein said housing comprises an enlarged cutout (the bottom portion of the housing (10) is considered to be

the enlarged cutout, Figs. 2 and 6), wherein said enlarged housing permits a large portion of said wheel to be exposed for contacting a workpiece (Fig. 6), and wherein said enlarged cutout provides an additional viewing area for viewing said incremental line markers of said wheel (Figs. 2 and 6).

Presley does not disclose the apparatus comprising a single wheel wherein measuring distances solely via revolution of said single wheel, wherein said incremental line markers enable measurement and display of distances based upon a fraction of a first revolution of said single wheel and optionally fractions of additional revolutions of said single wheel; and a squaring lip.

Stoner discloses an apparatus (Fig. 1) for measuring distances comprising a single wheel (A) comprising incremental line markers (Col 1, lines 44-48) for measuring distances solely via revolution of said single wheel, wherein said incremental line markers enable measurement and display of distances based upon a fraction of a first revolution of said single wheel and optionally fractions of additional revolutions of said single wheel (Fig. 1, Col 1, lines 44-48, Col 2, lines 50-83); wherein said single wheel comprises a circumference, said circumference selected from a group consisting of a 12-inch circumference (Fig. 1), a 16-inch circumference, a nineteen and two-tenths inch circumference, and a 24-inch circumference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the apparatus of Presley be of a single wheel construction, as taught by Stoner, in order to have the device be more compact and be made of fewer pieces, thereby decreasing the size and cost of the device and increasing user portability.

Canalle discloses an apparatus (10) for measuring distances, said apparatus comprising: a housing (10) that functions as a layout tool, said layout tool selected from a group consisting of a

straight edge, a gauging block, a ruler, or a combination thereof (Col 1, line 60-Col 2, line 56), and a squaring lip (26, 28, 30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Presley and Stoner to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

Regarding claim 5: Presley, Stoner, and Canalle disclose an apparatus for measuring distances where the housing comprises a sidewall comprising a length (Presley, Fig. 2) but does not specifically states a particular value for this sidewall length. However, to choose a sidewall length selected from the group consisting of 1 $\frac{1}{2}$ inches, 3 inches, 3 $\frac{1}{2}$ inches, and 5 $\frac{1}{2}$ inches, absent any criticality, is only considered to be the “optimum” value of the length of the sidewall, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a sidewall with a length of 1 $\frac{1}{2}$ inches, 3 inches, 3 $\frac{1}{2}$ inches, or 5 $\frac{1}{2}$ inches, in order to have the apparatus fit with maximum portability in a user’s hand.

Regarding claims 7, 8, 10, 22: Presley discloses an apparatus for measuring distances (Fig. 1), said apparatus comprising: a wheel (22) comprising incremental line markers for measuring distances (Figs. 1 and 2); a housing (10) comprising edges dimensioned and configured to correspond to the sizes and angles most often encountered during framing, wherein

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said housing further comprises a truncated flat front wall (18a, 18b), said front all enabling said housing to rest against a wall surface (Fig. 6); wherein said housing comprises an enlarged cutout (the bottom portion of the housing (10) is considered to be the enlarged cutout, Figs. 2 and 6), wherein said enlarged housing permits a large portion of said wheel to be exposed for contacting a workpiece (Fig. 6), and wherein said enlarged cutout provides an additional viewing area for viewing said incremental line markers of said wheel (Figs. 2 and 6).

Presley does not disclose the apparatus comprising a single wheel; a squaring lip.

Stoner discloses an apparatus (Fig. 1) for measuring distances comprising a single wheel (A) comprising incremental line markers (Col 1, lines 44-48) for measuring distances solely via revolution of said single wheel, wherein said incremental line markers enable measurement and display of distances based upon a fraction of a first revolution of said single wheel and optionally fractions of additional revolutions of said single wheel (Fig. 1, Col 1, lines 44-48, Col 2, lines 50-83); wherein said single wheel comprises a circumference, said circumference selected from a group consisting of a 12-inch circumference (Fig. 1), a 16-inch circumference, a nineteen and two-tenths inch circumference, and a 24-inch circumference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the apparatus of Presley be of a single wheel construction, as taught by Stoner, in order to have the device be more compact and be made of fewer pieces, thereby decreasing the size and cost of the device and increasing user portability.

Canalle discloses an apparatus (10) for measuring distances, said apparatus comprising: a housing (10) that functions as a layout tool, said layout tool selected from a group consisting of a

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straight edge, a gauging block, a ruler, or a combination thereof (Col 1, line 60-Col 2, line 56), and a squaring lip (26, 28, 30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Presley and Stoner to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

Regarding claim 10: Presley, Stoner, and Canalle disclose an apparatus for measuring distances where the housing comprises a sidewall comprising a length (Presley, Fig. 2) but does not specifically states a particular value for this sidewall length. However, to choose a sidewall length selected from the group consisting of 1 $\frac{1}{2}$ inches, 3 inches, 3 $\frac{1}{2}$ inches, and 5 $\frac{1}{2}$ inches, absent any criticality, is only considered to be the “optimum” value of the length of the sidewall, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a sidewall with a length of 1 $\frac{1}{2}$ inches, 3 inches, 3 $\frac{1}{2}$ inches, or 5 $\frac{1}{2}$ inches, in order to have the apparatus fit with maximum portability in a user’s hand.

Regarding claims 12-16: Presley discloses a method for measuring distances, said method comprising the steps of: obtaining an apparatus for measuring distances (Fig. 1, Col 3, lines 1-19), said apparatus comprising a wheel comprising incremental line markers for measuring distances, wherein said incremental line markers enable measurement and display of

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distances based upon a fraction of a first revolution of said wheel and optionally fractions of additional revolutions of said wheel (Fig. 2, Col 1, lines 49-68, Col 3, lines 1-19); a housing that functions as a straight edge (Fig. 6), wherein said housing further comprises a truncated flat front wall, said front wall enabling said housing to rest against a wall surface (Fig. 6); comprising the step of placing said wheel on a starting point on a surface requiring measurement, and rolling said wheel over the surface (Figs. 2 and 6, Col 1, lines 49-68, Col 3, lines 1-19); comprising the step of determining the distance traveled by said wheel from the starting point, wherein the distance is ascertained by said incremental line markers on said wheel (Figs. 2 and 6, Col 1, lines 49-68, Col 3, lines 1-19).

Presley does not disclose the method comprising a single wheel comprising incremental line markers for measuring distances solely via revolution of said single wheel, wherein said incremental line markers enable measurement and display of distances based upon a fraction of a first revolution of said single wheel and optionally fractions of additional revolutions of said single wheel; comprising placing said single wheel on a starting point on a surface requiring measurement and rolling said single wheel over the surface; comprising determining the distance traveled by said single wheel from the starting point, wherein the distance is ascertained by said incremental line markers on said single wheel; comprising a squaring lip; comprising the step of marking the surface at selected intervals indicated by said incremental line markers on said wheel; comprising the step of utilizing said housing to measure the sizes and angles most often encountered during framing.

Stoner discloses a method for measuring distances comprising a single wheel (Fig. 1) comprising incremental line markers for measuring distances solely via revolution of said single

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wheel (Col 1, lines 44-48, Col 2, lines 50-83), wherein said incremental line markers enable measurement and display of distances based upon a fraction of a first revolution of said single wheel and optionally fractions of additional revolutions of said single wheel (Fig. 1, Col 1, lines 44-48, Col 2, lines 50-83); comprising placing said single wheel on a starting point on a surface requiring measurement and rolling said single wheel over the surface (Fig. 3, Col 1, lines 44-48, Col 2, lines 50-83); comprising determining the distance traveled by said single wheel from the starting point, wherein the distance is ascertained by said incremental line markers on said single wheel (Col 1, lines 44-48, Col 2, lines 50-83).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the apparatus of Presley be of a single wheel construction, as taught by Stoner, in order to have the device be more compact and be made of fewer pieces, thereby decreasing the size and cost of the device and increasing user portability.

Canalle discloses a method for measuring distances comprising a squaring lip (Col 2, lines 1-40); comprising the step of marking the surface at selected intervals (Col 2, lines 1-40); comprising the step of utilizing said housing to measure the sizes and angles most often encountered during framing (Col 2, lines 1-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Presley and Stoner to include a squaring lip, as taught by Canalle, so that a user may accurately mark the centerlines of studs while framing (Canalle, Col 1, lines 50-59 and Col 2, lines 15-27).

4. Claim 1, 6, 7, 11, 17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betts (U. S. Patent No. 5,430,952) in view of Kuze et al. (U. S. Patent No. 4,965,944).

Regarding claims 1, 6, 17: Betts discloses an apparatus (10, 110, Betts discloses that the tape measure can include any one or more of the features shown, thereby indicating that features of each embodiment shown may be combined, Col 1, lines 35-60) for measuring distances, said apparatus comprising: a single wheel (115) comprising incremental line markers (117) for measuring distances solely via revolution of said single wheel, wherein said incremental line markers enable measurement and display of distances based upon a fraction of a first revolution of said single wheel and optionally fractions of additional revolutions of said single wheel (Col 1, lines 41-45, Col 3, lines 11-17, Examiner notes that radial distances are included in the claim language); a housing (10, 110) that functions as a layout tool (Col 1, lines 26-60), said layout tool selected from the group consisting of a straight edge (Col 1, lines 26-60), a gauge block, a ruler, or a combination thereof, wherein said housing comprises a truncated flat front wall (near reference number 16, Figs. 1-3), said front wall enabling said housing to rest against a wall surface (Figs. 1-3, the housing could rest against a wall surface).

Betts discloses the apparatus wherein said housing comprises a first sidewall adjacently disposed to a second sidewall at an angle selected from the group consisting of 45 degrees and 90 degrees (Figs. 1-3); comprising a blind nail hole (23, space for spike 30, 122).

Betts does not disclose the apparatus comprising a squaring lip disposed on said housing. Kuze et al. discloses an apparatus for measuring distances comprising a squaring lip (12) disposed on said housing (Figs. 1, 2, 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the squaring lip to the apparatus of Betts, as taught by Kuze et al., in order to square the apparatus against a surface and mark lines that are perpendicular to an edge of a

workpiece or at other angles (Kuze et al., Col 1, lines 21-25), thereby increasing the use of the device as a squaring tool.

Regarding claims 7, 11, 20: Betts discloses an apparatus (10, 110, Betts discloses that the tape measure can include any one or more of the features shown, thereby indicating that features of each embodiment shown may be combined, Col 1, lines 35-60) for measuring distances, said apparatus comprising: a single wheel (115) comprising incremental line markers (117) for measuring distances (Col 1, lines 41-45, Col 3, lines 11-17, Examiner notes that radial distances are included in the claim language); a housing (10, 110) comprising edges dimensioned and configured to correspond to the sizes and angles most often encountered during framing (Figs. 1-6).

Betts discloses the apparatus wherein said housing comprises a 'P'-shape comprising a base wall disposed parallel to a work surface (Figs. 1-3), a rear wall disposed ninety degrees from said base wall away from the work surface (Figs. 1-3), a top wall disposed ninety degrees from said rear wall and parallel to said base wall (Figs. 1-3), an angled wall disposed forty-five degrees from said top wall and extending toward the work surface (Figs. 1-3), and a front wall disposed forty-five degrees from said angled wall (Figs. 1-3), wherein said front wall enables said housing to rest against a wall surface perpendicular to the work surface (Figs. 1-3)..

Betts discloses the apparatus comprising a blind nail hole (23, space for spike 30, 122).

Kuze et al. discloses an apparatus for measuring distances comprising a squaring lip (12) disposed on said housing (Figs. 1, 2, 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the squaring lip to the apparatus of Betts, as taught by Kuze et al., in order to

square the apparatus against a surface and mark lines that are perpendicular to an edge of a workpiece or at other angles (Kuze et al., Col 1, lines 21-25), thereby increasing the use of the device as a squaring tool.

5. Claims 4, 9, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betts and Kuze et al. as applied to claims 1, 6, 7, 11, 17, 20 above, and further in view of Hodges (U. S. Patent No. 6,408,529).

Betts and Kuze et al. disclose the apparatus as described above in paragraph 4 and where the housing of the apparatus comprises measuring indicia for measuring linear distances (Kuze et al., Fig. 1 and Col 3, lines 11-25).

Betts and Kuze et al. do not disclose the apparatus wherein the measuring indicia comprise measuring notches for measuring linear distances; wherein said housing comprises plumb lines and roof pitches, and wherein said plumb lines comprise markings utilized to level said apparatus on a workpiece, and wherein said roof pitches comprise markings utilized to frame rafters and similar building components.

Hodges discloses an apparatus wherein measuring indicia comprise measuring notches for measuring linear distances (Col 2, lines 24-65); wherein said housing comprises plumb lines and roof pitches, and wherein said plumb lines comprise markings utilized to level said apparatus on a workpiece, and wherein said roof pitches comprise markings utilized to frame rafters and similar building components (Col 2, lines 24-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have all of the indicia comprise measuring notches and to include plumb lines and roof pitches in the apparatus of Betts and Kuze et al., so that the measuring indicia would be

tactile as well as visual and in order to have the specific plumb lines and roof pitches on the apparatus so that a user could easily reference common ratios used in layout devices, increasing the speed at which frame-layout jobs can be completed.

Allowable Subject Matter

6. Claims 18, 21, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 2, and 4-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose apparatus for measuring Bond (U. S. Patent No. 6,964,109), Allemand (U. S. Patent No. 6,868,616), Graham (U. S. Patent No. 6,725,556), Roach et al. (U. S. Patent No. 4,835,877), Huat (U. S. Patent No. 4,462,167), Showers (U. S. Patent No. 3,568,322), Anderson (U. S. Patent No. 1,986,551), Woodyard (U. S. Patent No. 1,972,122), and Wells (U. S. Patent No. 437,065).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC
February 15, 2006



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